

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PRICELESS M.,

Claimant,

and

NORTH LOS ANGELES COUNTY  
REGIONAL CENTER,

Service Agency.

OAH Case No. 2011070310

**DECISION**

This matter was heard by Samuel D. Reyes, Administrative Law Judge, Office of Administrative Hearings, in Lancaster, California, on November 3, 2011.

Rhonda Campbell, Contract Officer, represented North Los Angeles County Regional Center (Regional Center or Service Agency).

Claimant was represented by her mother, Delvona M.<sup>1</sup>

Oral and documentary evidence was received at the hearing, and the matter was submitted for decision.

**ISSUE**

Is Claimant eligible for Regional Center services by reason of a developmental disability within the meaning of the Lanterman Developmental Disabilities Services Act, Welfare and Institutions Code<sup>2</sup> section 4500 et seq. (Lanterman Act)?

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<sup>1</sup> Initials have been used to protect the privacy of Claimant and her family.

<sup>2</sup> All further references are to the Welfare and Institutions Code.

## FINDINGS OF FACT

1. Claimant was born on July 26, 2007. She is currently in foster placement.
2. Claimant initially sought eligibility in early 2010, while a participant in the Early Start Program at Regional Center. On April 23, 2010, Carlo De Antonio, M.D., reviewed the medical information received by Service Agency and concluded that there was no indication of substantially handicapping cerebral palsy, epilepsy, or chronic major medical condition.
3.
  - a. On June 2, 2010, Larry E. Gaines, Ph.D. (Gaines), performed a psychological evaluation. Claimant was 2.10 years of age at the time. Dr. Gaines performed several tests, interviewed Claimant's mother, and observed Claimant.
  - b. Dr. Gaines assessed Claimant's cognitive ability through the Leiter International Performance Scale – Revised (Leiter), in which Claimant was asked to perform several tasks by the evaluator. Her Intelligence Quotient (IQ) was measured as 75, in the borderline range of intellectual functioning. However, Dr. Gaines was concerned that she did not grasp some of the concepts measured in subtests of the Leiter, namely, those dealing with sequencing and repeated patterns, areas in which Claimant attained low borderline scores and which placed her at risk for learning and developmental difficulties. She demonstrated strength in other areas, those dealing with matching and classification, in which she scored in the average range.
  - c. Claimant's adaptive functioning, as measured through the Vineland Adaptive Behavior Scale Second Edition (Vineland), with her biological mother as the reporter, was in the low average range of performance.
  - d. Language skills were an area of concern, falling in the borderline range of performance in the Vineland. Claimant primarily used single words, and made various noises and signals to communicate her needs. She was able to understand and follow simple directions.
  - e. Dr. Gaines diagnosed Expressive Language Disorder and Borderline Intellectual Functioning (provisional mental retardation suspected). Dr. Gaines was concerned about Claimant's significant delays in conceptual aspects of learning, which could be indicative of mental retardation.
4. In an Individualized Education Program Plan (IEP) prepared after a meeting on June 8, 2010, the Antelope Valley Selpa found Claimant eligible for special education services due to speech and language impairment. The agency assessed Claimant's expressive language as moderately delayed, at an age-equivalent 1.6 years. Claimant was scheduled to attend preschool in a regular classroom, with speech and language services.
5. On July 19, 2010, Service Agency found Claimant not eligible for services under the Lanterman Act.

6. Claimant and her nine siblings were removed from their mother's care in January 2011. In February 2011, Claimant and two of her sisters were placed in the foster care of Kimberly Clark (Clark). Two of Claimant's siblings are Service Agency consumers, one with a diagnosis of mental retardation and one with diagnoses of autism and mental retardation. Clark sought eligibility under the Lanterman Act for Claimant, expressing concerns about autism and mental retardation.

7. a. On May 24, 2011, Heike Ballmaier, Ph.D. (Ballmaier), a staff psychologist with Service Agency, performed a psychological evaluation of Claimant. Claimant was 3.9 years at the time. Dr. Ballmaier met with Claimant, reviewed pertinent records, and administered the Wechsler Preschool and Primary Scale of Intelligence, Third Edition (Wechsler), the Adaptive Behavior Assessment System, Second Edition (ABAS-II), the Gilliam Autism Rating Scale, Second Edition (Gilliam), the Autism Diagnostic and Observation Schedule Generic, Module 1 (ADOS), and the Beery-Buktenica Developmental Test of Visual-Motor Integration, Fifth Edition. Clark was the reporter in the ABAS-II and in the Gilliam.

b. Upon being greeted by Dr. Ballmaier, Claimant smiled and exhibited good eye contact. Claimant was cooperative during testing, but experienced difficulty remaining seated and staying on task. Although initially somewhat withdrawn, Claimant was able to warm up to the evaluator. Claimant continued to demonstrate good eye contact during the entire interview, with a range of facial expressions, and appropriate gestures and index finger pointing. Vocal production was limited to occasional one-word phrases and her enunciations were difficult to understand.

c. Cognitive ability was measured through the Wechsler. Claimant scored in the low average range in the verbal intellectual quotient portion (81), in the borderline range in the performance intellectual quotient (76), resulting in a full scale quotient in the borderline range (76).

d. Claimant's adaptive functioning scores, in the ABAS categories of General Adaptive Composite, Conceptual, Social, and Practical Skills all fell in the extremely low range. Conceptual skills are divided into communication, functional academics and self-direction, and Claimant's deficits were evident in all areas. However, despite her limited vocalization Claimant did not display typical autistic traits, such as stereotyped or idiosyncratic words. Clark reported aggressive and compulsive behaviors, and Dr. Ballmaier observed Claimant meticulously cleaning and arranging her toys. With respect to Practical Skills, Claimant demonstrated borderline functioning in the subcomponents of home living and safety skills, but scored in the deficit range in the community and self-care skills areas.

e. Dr. Ballmaier did not find any significant autistic characteristics in the administration of the semi-structured play scenarios involved in the ADOS. Claimant demonstrated good eye contact most of the time, responded well to the examiner's efforts to engage her in pretend play, requested objects that interested her, shared enjoyment in interaction and play, and was able to imitate Dr. Ballmaier's actions. Claimant made unusual mouthing sounds, and her limited expressive language skills created a barrier at times to effective

communication and play. She also appeared to be shy and somewhat withdrawn, but in Dr. Ballmaier's opinion such behavior did not reflect any qualitative social impairment. In the Gilliam, Clark reported some behaviors that might be considered stereotypical and some concerns about social interaction, but these were not significant enough to indicate qualitative impairments consistent with autism.

f. Dr. Ballmaier diagnosed Claimant with Expressive Language Disorder and Borderline Intellectual Functioning. Claimant's cognitive ability, while in the borderline range, was closer to the average range. Adaptive skills were in the deficit range, but Dr. Ballmaier opined that Claimant's speech and language deficits, and her shyness, are likely due to external factors, namely, her lack of educational opportunities and her unstable home situation. Dr. Ballmaier expects Claimant's adaptive skills to improve with school, continued speech and language therapy, and home stability. If the adaptive deficits persist, then reevaluation may be appropriate.

8. On June 22, 2011, Service Agency again found Claimant not eligible for services under the Lanterman Act. Claimant's mother filed a fair hearing request on July 5, 2011.

#### LEGAL CONCLUSIONS

1. In order to be eligible to receive services from a regional center, a claimant must have a developmental disability, which is specifically defined as "a disability that originates before an individual attains age 18 years, continues, or can be expected to continue, indefinitely, and constitutes a substantial disability for that individual. As defined by the Director of Developmental Services, in consultation with the Superintendent of Public Instruction, this term shall include mental retardation, cerebral palsy, epilepsy, and autism. This term shall also include disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation, but shall not include other handicapping conditions that are solely physical in nature." (Welf. & Inst. Code, § 4512, subd. (a).)

2. No evidence was presented to establish that Claimant has cerebral palsy or epilepsy, and there is no contention that she has either condition. No evidence was presented at the hearing that Claimant has received a diagnosis of autism, and Dr. Ballmaier's testing and observations tend to rule out such condition.

3. Claimant's cognitive functioning is in the borderline range, higher than that typically associated with the presence of mental retardation. Her adaptive skills are in the deficit range, and may be consistent with mental retardation, a condition closely related to mental retardation, or one requiring treatment similar to that required by individuals with mental retardation. However, the undisputed, credible, and persuasive testimony of Dr. Ballmaier is that these deficits are likely the result of other factors, such as Claimant's language challenges, her lack of educational opportunities, and the emotional instability of her present home situation.

4. In the existing circumstances, it was not established that Claimant has a developmental disability within the meaning of the Lanterman Act, and she is not presently eligible to receive Service Agency services, by reason of factual finding numbers 1 through 7 and legal conclusion numbers 1 through 3.

#### ORDER

Claimant's appeal is denied.

DATED: \_\_\_\_\_

SAMUEL D. REYES  
Administrative Law Judge  
Office of Administrative Hearings

#### NOTICE

This is the final administrative decision in this matter and both parties are bound by this Decision. Either party may appeal this Decision to a court of competent jurisdiction within 90 days.